Supreme Court, U.S.
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NO. 90-1823

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

GEORGE C. WATSON,

PETITIONER

V.

UNITED STATES OF AMERICA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED

United States Sentencing Guideline 1B1.3(a)(2) is invalid as applied to the facts of this case, because it exceeds the authority granted by the enabling legislation authorizing the promulgation of said guidelines, and is violative of the Fifth Amendment right to Due Process of Law in that the trial court aggregated the conduct involving uncharged conduct to increase the Petitioner's base sentencing level under the United States Sentencing Guidelines.

THE PARTIES

The caption in this case contains the name of all parties.

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OPINIONS AND ORDERS BELOW

On May 14, 1990, the United States District Court for the Eastern District of Tennessee, Southern Division, orally denied the Petitioner's objections to consideration by the Court of uncharged conduct for sentencing purposes. See Appendix "A".

The opinion of the United States Court of Appeals for the Sixth Circuit entered on February 21, 1991, affirming the order of the United States District Court is a non-published opinion: United States v. Watson, No. 90-5769 (6th Cir. Feb. 21, 1991). See Appendix "B".

JURISDICTION

The opinion of the United States Court of Appeals for the Sixth Circuit was issued on February 21, 1991, and this Petition is filed within 90 days of said date. This Court's jurisdiction is invoked pursuant to 28 U.S.C. Section 1254(1).

Jurisdiction is also invoked pursuant to Rule 10.1(1), Rules of the Supreme Court: "When a United States Court of Appeals has rendered a decision in conflict with the decision of another United States Court of Appeals on the same matter." The opinion in

Petitioner's case is in conflict with United States v. Castro-Cervantes, 929 F.2d 1079 (9th Cir. 1991).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

STATUTORY PROVISIONS INVOLVED

(1) U.S.S.G. Section 1B1.3(a)(2), which is set out in full in Appendix "C".

(2) U.S.S.G. Section 6B1.2(a), which is set out in full in Appendix "D".

STATEMENT OF THE CASE

On August 14, 1989, a Criminal Complaint was filed against George C. Watson (Petitioner) charging him with conspiracy to distribute and possess with intent to distribute a Schedule II controlled substance: methamphetamine. (R.1). Subsequently, on August 15, 1989, a two-count indictment was returned charging the Petitioner with a conspiracy to receive money and make a profit from the illegal sale and distribution of methamphetamine from on or about November, 1989, until on or about August 10, 1989. (R.5). Subsequently, a plea agreement was entered into between the United States and the Petitioner, and said plea agreement being sealed pursuant to Court order. (R.33). Pursuant to said agreement, the Petitioner pled guilty to count one of a superseding information, charging him with a conspiracy to

sell and distribute methamphetamine, a Schedule II controlled substance, from on or about November of 1988 until on or about August 10, 1989. (Superseding Information attached as Appendix "E"; Plea Agreement attached as Appendix "F"). The overt acts listed in the superseding information included the same overt acts alleged in the first indictment, in that it was alleged that in July of 1989, the Petitioner supplied different individuals with approximately one-half pound of methamphetamine on one occasion, one-half pound on another occasion, and approximately one and three quarters pounds of methamphetamine on the final date alleged, being July 26, 1989. (R.35). The guilty plea was entered on or about January 30, 1990.

On May 14, 1990, a sentencing hearing was held. Prior to hearing evidence at this hearing, the district judge announced that he

would accept the plea agreement entered into between the government and the Petitioner. (TR. p.3). Before proceeding with the hearing of evidence, a timely objection was made to the use of uncharged conduct to increase the offense level under which the Petitioner would be sentenced. (TR. p.4) (Appendix "A").

Following the hearing and arguments of counsel, the Court determined that he would base his sentence on "well in excess of the eight pounds that's utilized in connection with figuring the offense level under the guidelines," and that Petitioner was an "organizer" subject to a four-level increase under 3B1.1. (TR. p. 175). The Court then sentenced Petitioner to serve a term of one hundred ninety-nine (199) months (the guideline range being 168 to 210 months). (TR. p. 178-179) (Appendix "A").

Notice of appeal to the United States Court of Appeals for the Sixth Circuit was filed on May 18, 1990. The Court of Appeals affirmed the decision of the District Court on February 21, 1991. United States v. Watson, No. 90-5769, non-published. (Appendix "B").

Petitioner is currently incarcerated at the Federal Correctional Institution at Seagoville, Texas.

STATEMENT OF THE FACTS

FBI Agent David Mohr testified that he received information from a confidential informant within a few days following May 26, 1989, that the informant had driven to a Ramada Inn parking lot off of Interstate 75 in Marietta, Georgia, and that Petitioner delivered Ten Thousand ($10,000) Dollars in cash to two hispanic males and in return received what was believed to be either crank (methamphetamine) or cocaine. (TR. pp. 14,

15). The informant did not know what drug was actually delivered. (TR. p. 16). On a later occasion, the confidential informant advised Special Agent Mohr that he and Petitioner had traveled to Knoxville, Tennessee, and at a rooster fight, he observed individuals giving the Petitioner money, with the Petitioner passing methamphetamine to them. (TR. pp. 16, 17).

In addition, Special Agent Mohr testified that on approximately June 9, 1989, his confidential informant advised him that at another rooster fight on Sand Mountain, which is near Chattanooga, Tennessee, the informant observed Petitioner conducting similar activities, that is, individuals would come up to Petitioner, and he would sell them methamphetamine, with his girlfriend, Debbie Gibson, being present. (TR. p. 17). The agent gave further hearsay testimony that his

informant had advised him that on or about June 10, 1989, the informant went to the Savannah Beach and Racket Club in Georgia, and at that time the informant observed the Petitioner receive a bale of marijuana in return for a briefcase containing money. (TR. p. 18).

Special Agent Mohr further testified that on or about August 10, 1989, he and other agents conducted a search of the Petitioner's residence with a search warrant and found certain weapons, ammunition, and a substance which appeared to be inositol, and cassette tapes. The government introduced the tapes and transcripts as Exhibits 1 through 4 and in which Petitioner and another individual were talking about setting up a methamphetamine lab. (TR. pp. 38-41). In one tape that was found during the search of Petitioner's residence, the agent described Petitioner and

another individual discussing a twelve hundred (1,200) pound marijuana deal. (TR. p.40).

On cross-examination, Special Agent Mohr stated that he was unable to corroborate any of the information provided to him by the confidential informant. (TR. pp. 70071). More specifically, on cross-examination, Special Agent Mohr stated that with regard to the Marietta, Georgia trip, the Petitioner denied having been to Marietta and that the agent was unable to any extent to corroborate the information given him by the informant, either through motel bills or through the testimony of other individual, even though the informant had indicated that he and the Petitioner had checked into a motel or hotel. (TR. pp. 70-74).

On re-direct examination, Special Agent Mohr testified that he seized approximately One Hundred Thousand ($100,000) Dollars from

various accounts of the Petitioner (TR. p. 77), and that Petitioner had approximately Six Thousand ($6,000) Dollars in his possession at the time of his arrest. (TR. p. 77).

Deborah Gibson was twenty-nine (29) years old, single, and was living in Cleveland, Tennessee, with an individual named Virgil Laughter during the period of time around June of 1988. (TR. p.80). Ms. Gibson indicated Laughter obtained an additional source of methamphetamine and identified Petitioner as the supplier who she met at the apartment occupied by her and Virgil Laughter. (TR. pp. 81-82).

Ms. Gibson further testified that in July or August of 1988, Virgil Laughter went to Petitioner's residence and obtained approximately one-half pound of methamphetamine which was packaged in a gallon zip-lock bag. Laughter was to sell this

quantity of methamphetamine and pay Petitioner after it was sold. (TR. p. 84). She further testified that on occasion Laughter would obtain three (3) or four (4) pounds per week from Petitioner. (TR. p. 85). She testified that from July of 1988 through October of 1988, Petitioner supplied approximately three (3) pounds of methamphetamine per week to Laughter. (TR. p. 87). In November of 1988, there was some discussion between her and Virgil Laughter in which Laughter indicated that he and Petitioner were discussing a five (5) pound deal. Laughter did, in fact, obtain that quantity which was packaged in approximately ten (10) zip-lock baggies. (TR. pp. 88-90). The witness further testified that she was present when Petitioner and Virgil finalized this transaction. (TR. p.90). During this period she testified that she and Virgil diluted the methamphetamine

with inositol, which was obtained from Petitioner. (TR. p.92).

As to other drug involvement, Ms. Gibson testified that during this time period she and Petitioner would break up bales of marijuana. (TR. p. 93). This was done at a house in Polk County, Tennessee, probably in November of 1988. (TR. p. 94). She assisted Petitioner in breaking down the bales of marijuana and putting the marijuana into pound bags. (TR. pp. 94-95). She further testified that in addition to helping the Petitioner break up the bales of marijuana into smaller bags, she kept books and records of people who owed the Petitioner money for the marijuana and testified as to various prices being paid for the marijuana. (TR. p. 96-98).

On another occasion, in approximately the latter part of November or early part of December, 1988, Ms. Gibson testified to an

individual by the name of Bud Taylor coming to Petitioner's residence where she was present. She heard Taylor ask the Petitioner if he could obtain one-half pound of methamphetamine. (TR. p.99). There was no testimony introduced by the witness that this transaction ever, in fact, occurred.

After Virgil Laughter was murdered in February of 1989 (TR. p. 100), Mr. Gibson testified that she began residing with the Petitioner. (TR. pp.101-102). During the time that she lived with Petitioner, the witness testified that Petitioner continued to distribute marijuana. (TR. p.103). Deborah Gibson further testified that she continued to stay at Petitioner's house for approximately three (3) months, beginning in Mid-February of 1989 and that during that time period he continued to deal in methamphetamine. (TR. p. 104). The witness further testified that

during the time she was acquainted with Petitioner, in her opinion, he sold approximately fifty (50) pounds of methamphetamine. (TR. p.113).

Special Agent Peter Connoly, Federal Bureau of Investigation, also testified. (TR. p. 133). Special Agent Connoly was questioned specifically about a paragraph in the presentence report where it stated that during the latter part of 1988, an individual named Tommy Masters obtained large quantities of methamphetamine which he in turn would distribute, and at least one occasion, Masters obtained a large quantity of methamphetamine, approximately five (5) pounds, on a consignment basis after Masters was unable to pay for all the methamphetamine. (TR. p.135). Basically Connoly testified that he had received information from the Whitfield County (Georgia) Sheriff's Office that they had

developed information through informants that they said Tommy Masters owed Petitioner approximately Eighty Thousand ($80,000) Dollars for that particular drug transaction. (TR. p.136). The informant saw three (3) pounds of methamphetamine inside Tommy Masters residence. (TR. p.137). The witness speculated that this transaction involved five (5) pounds of methamphetamine, although there were only three (3) pounds found during a search of Tommy Masters' residence. (TR. p.137). This speculation arose from the fact that the informant told the Whitfield County Sheriff's Department, who in turn related to the F.B.I. that Tommy Masters owed George Watson approximately Eighty Thousand ($80,000) Dollars as a result of the drug raid which netted the three (3) pounds of methamphetamine. Since methamphetamine was going for sale on the market for approximately

Sixteen Thousand ($16,000) Dollars per pound, then a debt of Eighty Thousand ($80,000) Dollars owed to Petitioner would indicate to the witness that the transaction involved five (5) pounds of methamphetamine. (TR. pp. 137,138).

In addition to the alleged five (5) pound transaction between the Petitioner and Tommy Masters, the agent testified that this informant purchased approximately two and three quarter pounds of methamphetamine from the Petitioner. (TR. pp. 138,139). On cross-examination, the witness stated that no one actually saw the five (5) pounds of methamphetamine that was supposedly received by Tommy Masters on a consignment basis.

The Court determined that he would base Petitioner's sentence on "well in excess of the eight (8) pounds that's utilized in connection with figuring the offense level

under the guidelines, and that Petitioner was an organizer and leader." (TR. p.175). The Court then sentenced Petitioner to serve a term of one hundred ninety-nine (199) months. (Appendix "A").

SUMMARY OF THE ARGUMENT

The District Court accepted a plea agreement wherein Petitioner pleaded guilty to a superseding information charging specific conduct. Prior to sentencing the District Court considered and sentenced Petitioner based on uncharged conduct pursuant to U.S.S.G. Section 1B1.4 which states the sentencer can consider "without limitation" any information concerning the conduct of a defendant. This conflicts with U.S.S.G. Section 6B1.2(a) (policy statement) that a Court may accept a plea agreement if it "adequately reflect(s) the seriousness of the actual offense behavior..."; and is violative

of Petitioner's Fifth Amendment Rights. See: United States v. Castro-Cervantes, 927 F.2d 1079 (9th Cir. 1991).

ARGUMENT

Although this Court held that the Sentencing Guidelines were constitutional, United States v. Mistretta, 109 S.Ct. 647 (1989), there are numerous unresolved issues within the guidelines and in guideline application that can only be put to rest by this Court.

The instant case presents a question of constitutionality, due process, and fairness. The Petitioner entered into a plea agreement in order to minimize the negative aspects of the charges against him. He entered into a contract with the United States Government whereby he waived various constitutional rights in exchange for limiting his criminal exposure. However, all Petitioner received

was punishment based on uncharged conduct. If he had gone to trial, he may not have received this punishment. After entering his plea of guilty in the instant case, Petitioner was actually placed in a worse position than if he had gone to trial. This situation clearly frustrated his expectations when entering into the agreement (contract) with the government. Furthermore, it makes the government's job easier in that it maximized Petitioner's criminal culpability without having to establish proof beyond a reasonable doubt. This is both unfair, unconstitutional, and a breach of contract in the instant case. Furthermore, this situation creates a conflict within the Sentencing Guidelines and a conflict with other circuits on prevailing law.

Petitioner was charged in an original indictment with conspiracy to violate 21

U.S.C. Section 841(a)(1). The offense charged involved the distribution of methamphetamine, a Schedule II Controlled Substance. Specifically, the indictment charged him with distribution of approximately one-half pound of methamphetamine on July 13, 1989, one-half pound on July 18, 1989, and one and three quarter pounds of methamphetamine on July 26, 1989. (TR. 5, Indictment).

A superseding information charged one count, changing the dates of the alleged conspiracy to include November, 1988, through August 10, 1989. The same overt acts were listed and the same drug quantities referenced. (TR. 35, Superseding Information, pp. 3-4). Petitioner plead guilty to the superseding information.

The Sentencing Guideline was established by the Court as 168 to 210 months based on a base offense level of 34, a criminal history

score of II, a 4-level role enhancement, and a 2-level decrease for acceptance of responsibility.

The base offense level was arrived at based on the inclusion of uncharged conduct despite the fact that a plea agreement existed. If the base offense level had been computed only on the conduct to which Petitioner plead guilty by agreement, Petitioner contends the base offense level would have been significantly lower, i.e., 30. Petitioner contends that the relative range difference in the two base levels is 60 to 75 months. (See U.S.S.G., Section 2D1.1 and Section 5.1).

In essence, Petitioner's contentions are that he was being denied due process due to the fact that he was sentenced on the basis of uncharged and unproven criminal conduct.

The Sixth Circuit in United States v. Sailes, 872 F.2d 735 (6th Cir. 989), previously held that the trial court has the authority to impose a sentence based on the entire amount of drugs seized. The decision in this case was based on a similar proposition. A similar but distinguishable position was taken by the Fifth Circuit in United States v. Woolford, 896 F.2d 99 (5th Cir. 1990). Petitioner's sentence was imposed contrary to the enabling legislation of the Sentencing Guidelines wherein it is reasoned that no language of the enabling act allows incremental penalties for unconvicted offenses either in the same course of conduct or at different times.

Petitioner contents that Application Note 2 to U.S.S.G. Section 1B1.3 (wherein it is stated that multiple convictions are not revived in order to hold accountable a

defendant for criminal conduct) is in conflict with the enabling legislation.

Specifically, Petitioner, relying on a logical and well reasoned dissent in United States v. Miller, 910 F.2d 1321 (6th Cir. 1990), argues that it is unconstitutional to hold an individual accountable for alleged conduct for which he has not been charged or convicted. In Miller, supra, dissenting Chief Judge Merritt stated: "Most Circuits, including our own, have capitulated to the language of this Application Note without looking at the legal basis behind it and have allowed defendants automatically and mechanically to be sentenced under the guidelines for crimes not charged and convicted." Miller, supra, at 1330.

The Ninth Circuit in United States v. Castro-Cervantes, 927 F.2d 1079 (9th Cir. 1990), recently held that considering

dismissed charges of an indictment in calculating a defendant's base offense level violates the spirit if not the letter of the bargain. The Ninth Circuit opinion conflicts with those of other Circuits: United States v. Kim, 896 F.2d 678 (2nd Cir. 1990); United States v. Zamarripa, 905 F.2d 337, 341 (10th Cir. 1990); United States v. Blanco, 888 F.2d 907 (1st Cir. 1989).

There is tension and a conflict between Sentencing Guidelines Section 1B1.4 and 6B1.2(a). The Castro-Cervantes Court stated the following:

> "If Section 1B1.4 and its commentary stood alone there would be no doubt that the district court here could consider in its sentencing decision the [five robberies] where the charges were dismissed. But the Sentencing Guidelines also provide:
>
> > In the case of a plea agreement that includes the dismissal of any charges...the court may accept the agreement if the court

> determines...that the remaining charges adequately reflect the seriousness of the actual offense behavior...."

U.S.S.G. Section 6B1.2(a) (Policy Statement).

The plain implication of this section is that if the sentencing court believes that the remaining charges do not adequately reflect the seriousness of a defendant's behavior, the Court should not accept the plea agreement. See United States v. Plaza-Garcia, 914 F.2d 345, 348 (1st Cir. 1990). To do otherwise condones the unconstitutional practice of the government indicting for and permitting pleas on easily provable offenses and then using other speculated conduct referenced in the presentence report and not included in the charge or dismissed from the indictment to enhance the punishment. It is unfair to induce the defendant to enter a unilateral contract from which he receives no bargain.

The plea agreement, which the Petitioner signed, indicated that he understood that his Sentencing Guidelines would be based on the entire scope of his criminal conduct. Petitioner had a reasonable expectation that the benefit of his bargain (a plea of guilty) would ensure that he be sentenced on the basis of the entire scope of his criminal conduct to which he plead guilty. In further support of Petitioner's position that he had an expectation that he would only be held accountable for the offense of conviction to which he pled is the fact that he received absolutely nothing else for his plea of guilty. In fact, he was held accountable for drugs referenced in the indictment, drugs outside the indictment, and even received a role enhancement. If he had proceeded to trial, the jury may have convicted him but evidence may have been revealed that he should

not have been held accountable to the degree reflected by his sentence.

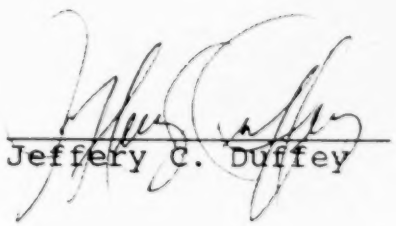
This Court has also recognized the unfairness of convicting a defendant of one thing and charging him with another in United States v. Hughey, 110 S.Ct. 1979 (1990). In Hughey, this Court addressed the unfairness of having a defendant pay restitution charged in specific counts of an indictment to which the defendant did not plead guilty and were dismissed. This same principle of fairness should apply in the instant case.

CONCLUSION

Petitioner submits that the United States Court of Appeals for the Sixth Circuit has decided a case in conflict with an opinion of the United States Court of Appeals for the Ninth Circuit in a manner repugnant to the United States Constitution and statutory law.

It is important for this Court to exercise its supervisory power to grant the petition for certiorari due to the sheer volume of defendants who are being given lengthy prison sentences based on uncharged conduct.

Petitioner prays that this Court will issue the writ of certiorari and will review the matters complained of and reverse the decision and opinions of the District Court and the Court of Appeals for the Sixth Circuit.



Jeffery C. Duffey

APPENDIX A

THE COURT: Okay. All right. The Court makes the following findings based upon the preponderance of the evidence that's been produced here at this hearing.

First of all, with respect to the amount of methamphetamine that is involved here, the Court finds that while there is at least one minor discrepancy as far as the precise pounds, which I'm talking really about paragraph 8 there of the presentence report, nevertheless, the Court finds that the Defendant dealt with at least eight pounds of methamphetamine during the period. (TR. p.173).

....

The Court finds that the Defendant dealt with at least eight pounds. The testimony here was that it was at least 50 pounds, but regardless of whether or not that's accepted, you got the money which represented at least

five pounds in connection with the Masters transaction and the paragraph 5 of the presentence report. And in that case, obviously, that one informant did actually see three pounds there, but it was money available which had been used in the dealing of methamphetamine for much in excess of five pounds.

The Court notes also, according to Ms. Gibson, Mr. Masters purchased several pounds weekly over a period of time.

With respect to the three pounds, paragraph 8, of course, we have three pounds documented there. So, technically, that should be two and three-quarters pounds, paragraph 8, 9, 10, 11. But the Court finds that, while that figure should be two and three-quarters pounds, the total amount that this Defendant dealt with was well in excess of the eight pounds that's utilized in

connection with figuring the offense level under the guidelines. (TR. pp. 174-175).

....

Okay. With respect to the objection that the Defendant has imposed here with regard to the addition of four levels of being an organizer, in accordance with Section 3B1.1 of the sentencing guidelines, the Court finds that on the basis of the evidence that's been presented here, that Mr. Watson is a supplier here, as far as all the people involved in this proceedings here are concerned; that he sold methamphetamine through a number of people, at least five.

These included Ms. Gibson, his brother Henry was involved, in dealing, dealing with the money, at least, Bud Taylor, Virgil Laughter, Tommy Masters, Clifford Johnson, and I believe somewhere there was a "Chicken" Smith, somewhere there in the phone

conversation or the taped phone conversation that had some dealing with these drugs, so that's well in excess of five, not to mention the Defendant himself.

Indications of the act, of his leadership role was, are, for one thing, he fronted the drug to other individuals, which indicated a certain amount of financial stability there that he was able to do that. And he did exercise control over the distribution of these drugs, particularly over Ms. Gibson herself.

So, the Court finds that the presentence report did properly give four levels for the Defendant being an organizer and leader under Section 3B1.1. (TR. pp. 175-176).

....

The Court will note for the record that the guidelines have been correctly calculated, those guidelines being 168 to 210 months.

(TR. p. 178).

....

THE COURT: All right. The Court is required by the guidelines to state reasons for its sentence. The reasons for the Court's sentencing in this case are the seriousness of the offense, the need to protect the public from further crimes committed by this Defendant.

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court upon Count 1 of the superseding information that the Defendant George C. Watson is hereby committed to the Bureau of Prisons to be imprisoned for a term of 199 months. (TR. p. 179).

APPENDIX B

FILED

FEB 21 1991

LEONARD GREEN, Clerk

NO. 90-5769

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	
V.	)	O R D E R
	)	
GEORGE C. WATSON,	)	
	)	
Defendant-Appellant.	)	

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.
This notice is to be prominently displayed if this decision is reproduced.

BEFORE: NELSON and SUHRHEINRICH, Circuit Judges; and WELLFORD, Senior Circuit Judge.

This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination of the record and briefs, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a). In addition, the attorneys for all parties have waived oral argument in this case.

George Watson pleaded guilty to one count of conspiracy to sell and distribute methamphetamine, in violate of 21 U.S.C. Section 841(a)(1). The district court subsequently imposed a one hundred ninety-nine (199) month term of imprisonment. This appeal followed, the parties have briefed the issues.

Upon consideration, we find no reversible error in the proceedings. Watson's lone claim on appeal is that U.S.S.G. Section 1B1.3(a)(2) is unconstitutional. There is a question as

to whether the section was applied in this case. Even if applicable, Section 1B1.3(a)(2) of the Sentencing Guidelines directs the district judge to consider all relevant evidence in fashioning the appropriate punishment. Watson contends that the consideration of uncharged, aggravating conduct pursuant to this guideline is violative of his due process rights.

This court has repeatedly held that a district court is correct in factoring all relevant conduct into the base offense equation. See, e.g., United States v. Miller, 910 F.2d 1321 (6th Cir. 1990); United States v. McDowell, 902 F.2d 451, 454 (6th Cir. 1990). We are found by these prior holdings of this court.

We find the sentence imposed under the guidelines in this case to be consistent with the statutory authority set out in 28 U.S.C.

Section 994(a)(1)(B). Accordingly, the district court's judgment is **AFFIRMED**. Rule 9(b)(5), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
CLERK

APPENDIX C

Section 1B1.3 **Relevant Conduct (Factors that Determine the Guidelines Range)**

(a) Chapters Two (Offense Conduct) and Three (Adjustments). Unless otherwise specified, (i) the base offense level where the guideline specifies more than one base offense level, (ii) specific offense characteristics and, (iii) in cross references to Chapter Two, and (iv) adjustments in Chapter Three, shall be determined on the basis of the following:

(1) all acts and omissions committed or aided and abetted by the defendant, or for which the defendant would be otherwise accountable, that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense, or that otherwise were in furtherance of that offense;

(2) solely with respect to offenses of a character for which Section 3D1.2(d) would require grouping of multiple counts, all such acts and

omissions that were part of the same course of conduct of common scheme or plan as the offense of conviction;

(3) all harm that resulted from the acts or omissions specified in subsections (a)(1) and (a)(2) above, and all harm that was the object of such acts or omission; and

(4) any other information specified in the applicable guideline.

(b) Chapters Four (Criminal History and Criminal Livelihood) and Five (Determining the Sentence). Factors in Chapters Four and Five that establish the guideline range shall be determined on the basis of the conduct and information specified in the respective guidelines.

APPENDIX D

Section 6B1.2. Standards for Acceptance of Plea Agreements

(Policy Statement)

(a) In the case of a plea agreement that includes the dismissal of any charges or an agreement not to pursue potential charges [Rule 11(e)(1)(A)], the court may accept the agreement if the court determines, for reasons stated on the record, that the remaining charges adequately reflect the seriousness of the actual offense behavior and that accepting the agreement will not undermine the statutory purposes of sentencing.

(b) In the case of a plea agreement that includes a nonbinding recommendation [Rule 11(e)(1)(B)], the court may accept the recommendation if the court is satisfied either that:

(1) the recommended sentence is within the applicable guideline range; or

(2) the recommended sentence departs from the applicable guideline range for justifiable reasons.

(c) In the case of a plea agreement that includes a specific sentence [Rule 11(e)(1)(C)], the court may accept the agreement if the court is satisfied either that:

(1) the agreed sentence is within the applicable guideline range; or

(2) the agreed sentence departs from the applicable guideline range for justifiable reasons.

APPENDIX E

FILED

JAN 30 4:20PM '90
U.S. DISTRICT COURT
EASTERN DIST. TENN.
BY /S/
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

UNITED STATES OF AMERICA	)	
	)	
V.	)	**NO. 1-89-74**
	)	
GEORGE C. WATSON	)	

SUPERSEDING INFORMATION

COUNT 1

The United States Attorney charges that from on or about November 1988, until on or about August 10, 1989, in the Eastern District of Tennessee and elsewhere, the defendant, GEORGE C. WATSON, and others known and unknown to the Grand Jury, did knowingly, intentionally, unlawfully, and without authority, combine, conspire, confederate, and agree to commit violations of 21 U.S.C.

Section 841(a)(1): the distribution and possession with the intent to distribute methamphetamine, a Schedule II controlled substance.

PURPOSE

The purpose and object of the conspiracy was for the defendant, GEORGE C, WATSON, and other persons known and unknown to the Grand Jury, to receive money and make a profit from the illegal sale and distribution of methamphetamine.

METHODS AND MEANS

To accomplish the purpose of the conspiracy the defendant, GEORGE C. WATSON, and other persons known and unknown to the Grand Jury, used the following methods and means among others:

(a) Acts involving the felonious distribution and possession with the intent to distribute methamphetamine, in violation of 21

U.S.C. Section 841;

(b) Acts of knowingly and intentionally traveling in interstate commerce with the intent to promote, manage, facilitate, and carry on an illegal business activity, to-wit: the possession with the intent to distribute and the distribution of methamphetamine, in violation of 18 U.S.C. Section 1952(a);

(c) Acts of knowingly and intentionally traveling in interstate commerce with the intent to collect the proceeds of illegal methamphetamine distribution, in violation of 18 U.S.C. Section 1952(a).

It was a part of the conspiracy that the defendant, GEORGE C. WATSON, would obtain quantities of methamphetamine for redistribution.

It was further a part of the conspiracy that the defendant, GEORGE C. WATSON, would supply and provide other individuals with

quantities of methamphetamine for the purpose of having those individuals redistribute and sell the methamphetamine.

It was further a part of the conspiracy that the defendant, GEORGE C. WATSON, would in the Eastern District of Tennessee and elsewhere, hold various meetings and conversations with others for the purpose of obtaining cash proceeds in exchange for the methamphetamine.

OVERT ACTS

To carry out the Purpose and Methods and Means of the conspiracy, the defendant, GEORGE C. WATSON, committed the following overt acts, as well as others, in the Eastern District of Tennessee and elsewhere:

1. On or about July 13, 1989, the defendant, GEORGE C. WATSON, provided and supplied another individual with approximately one-half pound of methamphetamine in exchange

for $8,000 in United States currency.

2. On or about July 18, 1989, the defendant, GEORGE C. WATSON, provided and supplied another individual with approximately one-half pound of methamphetamine.

3. On or about July 19, 1989, the defendant, GEORGE C. WATSON, met with another individual and obtained approximately $4,700 in United States currency as partial payment for the methamphetamine supplied by the defendant, GEORGE C. WATSON, on or about July 18, 1989.

4. On or about July 24, 1989, the defendant, GEORGE C. WATSON, met with another individual and obtained approximately $3,300 in United States currency as final payment for the methamphetamine supplied by the defendant, GEORGE C. WATSON, on or about July 18, 1989.

5. On or about July 26, 1989, the defendant, GEORGE C. WATSON, provided and

supplied another individual with approximately one and three-quarter pounds of methamphetamine.

6. On or about August 9, 1989, the defendant, GEORGE C. WATSON, within the Eastern District of Tennessee, met with another individual and obtained approximately $5,000 in United States currency as partial payment for the methamphetamine supplied by the defendant, GEORGE C. WATSON, on or about July 26, 1989. [21 U.S.C. Section 846]

/s/ Steven H. Cook AUSA
for United States Attorney

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
V.	)	**NO.CR-1-89-74**
	)	
GEORGE C. WATSON	)	

PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States of America, by John W. Gill, Jr., United States Attorney for the Eastern District of Tennessee, and the defendant, George C. Watson, and his attorneys, Leroy Phillips and Bobby Lee Cook, have agreed upon the following:

1. The defendant agrees to plead guilty to count 1 of a Superseding Information charging him with a violation of 21 U.S.C. Section 846, conspiracy to distribute and possess with the intent to distribute methamphetamine. Pursuant to Rule 11(e)(1)(A)

of the Federal Rules of Criminal Procedure the United States agrees that it will move the Court at the time of sentencing to dismiss the Indictment against this defendant in this case. The parties further agree that the appropriate disposition of this case would be the following:

(a) The Court may impose any lawful term of imprisonment up to the statutory maximum;

(b) The Court may impose any lawful fine up to the statutory maximum and/or;

(c) The Court may impose any lawful term of probation or supervised release.

2. The defendant further agrees to cooperate fully, truthfully, and completely with any and all law enforcement agents including but not limited to personnel of the United States Attorney's office. This cooperation includes, but is not limited to, meeting with such law enforcement agents or

United States Attorney's personnel whenever requested. The defendant further agrees not to protect anyone who was truly involved and not to falsely implicate anyone who was not truly involved. The defendant further agrees to testify fully, truthfully and completely before a federal grand jury if called upon to do so, and to testify fully, truthfully, and completely at any trial if called upon to do so. The defendant also knowingly, voluntarily and intentionally waives his right (where applicable) to have an attorney present during the course of his cooperation including questioning.

3. The defendant understands and acknowledges that his agreement to cooperate fully, truthfully, and completely is an integral part of this agreement and that upon his failing to do so the United States will be free to withdraw from this plea agreement.

4. The defendant further understands that nothing in this agreement shields him from prosecution for perjury in the event that he commits such an offense. The defendant further understands that should the defendant commit perjury, the United States will be free to prosecute him for that offense and further that the United States will be free to withdraw from this plea agreement.

5. The United States further agrees that any self-incriminating information provided by the defendant pursuant to his cooperation under this written plea agreement (outlined above) will not be used against the defendant. The defendant, however, recognizes that nothing in this plea agreement shall be applied to restrict the use of information (1) known to the government prior to entering into this written plea agreement; (2) in any prosecution for perjury or giving of false

statement; (3) in the event that the defendant withdraws from the plea agreement or (4) if there is a breach of the plea agreement by the defendant.

6. At the time of sentencing the United States agrees to bring to the Court's attention the nature, extent, and value of the defendant's cooperation. This information will be provided to the Court so that it may be considered in determining a fair and appropriate sentence under the facts of the case.

7. The defendant acknowledges that he understands that his case is governed by the Sentencing Guidelines and that any term of imprisonment imposed under the guidelines is nonparolable. The defendant further acknowledges that he understands that the Court will determine the appropriate sentence under the Sentencing Guidelines and that this

determination will be based upon the entire scope of his criminal conduct, his criminal history, and pursuant to other factors and guidelines set forth in the Sentencing Guidelines.

8. The defendant further agrees not to file any motions or pleadings pursuant to 28 U.S.C. Section 2255. Specifically, the defendant knowingly, intentionally, and voluntarily waives his right to collaterally attack the plea(s) being offered in the instant case. Defendant further acknowledges that a breach of this clause of the plea agreement would leave the United States free to withdraw from the plea agreement.

9. The parties further agree that this plea agreement constitutes the full and complete agreement and understanding between the parties concerning the defendant's guilty plea(s) to the above-referenced charge(s), and

that there are no other agreements, promises, undertakings, or understandings between the defendant and the United States.

JOHN W. GILL, JR.
UNITED STATES ATTORNEY

/s/_____
Steven H. Cook
Assistant U.S. Attorney

/s/_____
George C. Watson, Defendant

/s/_____
Bobby Lee Cook, Attorney for Defendant

/s/_____
Leroy Phillips, Attorney for Defendant

CERTIFICATE OF SERVICE

I, Jeffery C. Duffey, a member of the Bar of the Supreme Court of the United States and attorney for Petitioner, hereby certify that on this 22d day of May, 1991, I placed the foregoing Petition in the United States Mail, First Class, Postage Prepaid, to Honorable William K. Suter, Clerk, United States Supreme Court, 1 First Street, N.W., Washington, D.C. 20643, and I served the correct number of copies of the Petition on John W. Gill, Jr., United States Attorney, 354 Federal Building, Chattanooga, Tennessee, 37402-2268, and on the Solicitor General, Department of Justice, Washington, D.C., 20530, by First Class Mail, Postage Prepaid.

Jeffery C. Duffey
Attorney for Petitioner